



## GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

STATE OF CALIFORNIA • OFFICE OF GOVERNOR EDMUND G. BROWN JR.

### CALIFORNIA COMPETES TAX CREDIT ASSIGNMENT AND NOVATION AGREEMENT

This California Competes Tax Credit Assignment and Novation Agreement ("Novation Agreement") is made by and between Sunshine Butter Company, LLC, a California limited liability company ("Assignor"), Heritage Distributing Company, a California corporation ("Assignee"), and the California Governor's Office of Business and Economic Development ("GO-Biz"), hereinafter, collectively referred to as "Parties".

- A. GO-Biz and Assignor are parties to a California Competes Tax Credit Allocation Agreement ("Underlying Agreement") that became effective January 15, 2015.
- B. Pursuant to the Underlying Agreement, in return for a California Competes Tax Credit of three hundred twenty-five thousand dollars (\$325,000.00), Assignor agreed to invest in manufacturing and pasteurization equipment, office and computer equipment, software, tractors, trailers, and forklifts, to expand a shelf life processing plant in the City of Industry, and to hire full-time employees.
- C. Assignor desires to assign to Assignee and be discharged from the performance and obligations enumerated in the Underlying Agreement and Assignee desires to assume from Assignor, all of Assignor's rights and obligations under the Underlying Agreement accruing from the Underlying Agreement, on the terms set forth below, including the milestone chart attached as Exhibit A to this Novation Agreement .
- D. In consideration of Assignee assuming all of Assignor's rights and obligations under the Underlying Agreement, GO-Biz agrees to release Assignor from all liabilities and obligations under the Underlying Agreement on the terms and conditions set forth below.

In consideration for the mutual covenants and promises in this Novation Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree for themselves, their successors and assigns, as follows:

1. **Effective Date.** The effective date ("Effective Date") of this Novation Agreement shall be the date that this Novation Agreement is approved by the California Competes Tax Credit Committee ("Committee").
2. **Assignment.** Assignor hereby assigns, transfers, conveys and delivers to Assignee, all of Assignor's rights and obligations under the Underlying Agreement to Assignee.
3. **Assumption.** Assignee hereby accepts such assignment from Assignor and agrees to assume, from and after the Effective Date, Assignor's rights and obligations, specifically Assignee agrees to satisfy the milestones as described in Exhibit A attached to this Novation Agreement and will maintain each milestone for a minimum of three (3) taxable years thereafter. Assignee shall perform the obligations of Assignor that may accrue or become performable, due or owing under the Underlying Agreement, from and after the effective date of the Underlying Agreement and Assignee shall be bound by the terms and conditions of the Underlying Agreement in every way as if Assignee were originally a party to the Underlying Agreement, except as provided for in this Novation Agreement.
4. **Release.** Notwithstanding anything to the contrary in the Underlying Agreement, GO-Biz releases and forever discharges Assignor from all obligations accruing from the Underlying Agreement upon the Effective Date of this

1325 J Street, 18<sup>th</sup> FLOOR, SACRAMENTO, CALIFORNIA 95814

Novation Agreement. GO-Biz recognizes Assignee as Assignor's successor-in-interest in and to the Underlying Agreement. Following the Effective Date of this Novation Agreement, the term "Taxpayer," as used in the Underlying Agreement, shall refer to Assignee.

5. **Notice.** Any notices required or permitted to be given under this Novation Agreement shall be given in writing and shall be delivered (a) in person, (b) by certified mail, (c) by facsimile with confirmed receipt required, (d) electronic communication with confirmed receipt required, or (e) by commercial overnight courier that guarantees next day delivery and provides a receipt. Within 30 days of the Effective Date of this Novation Agreement, Assignee shall notify GO-Biz, in writing, of the name, address, phone number, and email of the contact person for Assignee. In addition, Assignee agrees to immediately inform GO-Biz of any changes to the name, address, phone number, and email of the contact person for Assignee. Any notices required or permitted to be given under this Novation Agreement to GO-Biz shall be addressed as set forth below:

To GO-Biz: 1325 J Street  
18<sup>th</sup> Floor  
Sacramento, California, USA 95814


Attention: Deputy Director, California Competes Tax Credit  
Program  
Phone: (916) 322-4051  
Email: Calcompetes@gov.ca.gov

6. **Modification.** All other terms and conditions of the Underlying Agreement that are not hereby amended remain in full force and effect. This Novation Agreement may be amended or modified only by mutual agreement of the Parties in written addendum. If Committee approval is necessary, due to changes in the milestones, the modification will not be valid until the addendum is approved by the Committee.
7. **Ambiguities.** Each Party has had the opportunity to seek the advice of counsel or has refused to seek the advice of counsel. Each Party and its counsel, if appropriate, have participated fully in the drafting, review and revision of this Novation Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Novation Agreement. The language in this Novation Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.
8. **Necessary Acts, Further Assurances.** The Parties shall at their own cost and expense execute and deliver any further documents and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Novation Agreement.
9. **Sections and Other Headings.** The section and other headings contained in this Novation Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Novation Agreement.
10. **Consultants and Attorney's Fees.** Each of the Parties shall be responsible for and pay in their entirety its respective attorney's fees, auditors and consultant fees, costs and expenses in connection with the subject matter of this Novation Agreement and any audit that may be conducted as a result of the transaction contemplated herein. Notwithstanding Revenue and Tax Code section 19717, under no circumstances is any Party to this contract entitled to attorney's fees with regard to litigation resulting from this Novation Agreement.

11. **Representation on Authority of Parties/Signatories.** Each person signing this Novation Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Novation Agreement. Each Party represents and warrants to the other parties that the execution and delivery of the Novation Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Novation Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.
12. **Severability.** If any term of this Novation Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
13. **Approval.** This Novation Agreement shall not be binding until it has been approved by the Committee during a duly noticed Committee meeting.
14. **Execution.** This Novation Agreement may be executed in parts, by fax, or other similar electronic means.

*Remainder of the page is intentionally left blank. Signature page immediately follows.*

**Governor's Office of Business and Economic Development**

By:   
Name: William Koch

Its: Deputy Director

Date: April 2, 2015 | 15:43 PT

**Assignor**

Sunshine Butter Company, LLC

By:   
Name: Edgar Del Rio

Its: CFO

Date: April 1, 2015 | 15:37 PT

**Assignee**

Heritage Distributing Company

By:   
Name: Edgar Del Rio

Its: CFO

Date: April 1, 2015 | 15:37 PT

**Exhibit A****Taxpayer: Heritage Distributing Company**

	2014 Tax Year (Base)	2015 Tax Year	2016 Tax Year	2017 Tax Year	2018 Tax Year	2019 Tax Year	Total
<b>Total California Full-Time Employees<sup>1</sup></b>	63	68	88	108	113	114	
<b>Net Increase of Full-Time Employees Compared to the Base Year</b>		5	25	45	50	51	
<b>Minimum Annual Salary of California Full- Time Employees Hired</b>		\$24,960	\$24,960	\$24,960	\$26,000	\$26,000	
<b>Cumulative Average Annual Salary of California Full- Time Employees Hired</b>		\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	
<b>Investments</b>		\$18,500,000	\$2,000,000	\$0	\$0	\$0	\$20,500,000
<b>Tax Credit Allocation</b>		\$50,000	\$120,000	\$100,000	\$50,000	\$5,000	\$325,000

<sup>1</sup> Determined on an annual full-time equivalent basis